

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04-11127-JLT

EXPERIENCE, INC.

Plaintiff

v.

CSO RESEARCH, INC.

Defendants

**EXPERIENCE, INC.'S RESPONSE TO DEFENDANT'S COUNTERCLAIM**

The plaintiff and defendant-in-counterclaim Experience, Inc. ("Experience"), by its attorneys, hereby responds to the Counterclaim of CSO Research, Inc. ("CSO") as follows:

1. Admitted that CSO seeks a declaratory judgment under 28 U.S.C. § 2201, *et seq.*, that the alleged copyrights are invalid, unenforceable, and not infringed; otherwise, denied.
2. Experience is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2, and therefore denies same.
3. Admitted.
4. The first sentence of paragraph 4 alleges conclusions of law to which no responsive pleading is required, however, Experience admits that CSO asserts counterclaims arising under the Copyright Law of the United States, Title 17, United States Code. The second sentence of paragraph alleges conclusions of law to which no responsive pleading is required, however, Experience admits that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331.

5. This paragraph alleges conclusions of law to which no responsive pleading is required, however, Experience admits that this Court has personal jurisdiction over Experience.

6. This paragraph alleges conclusions of law to which no responsive pleading is required, however, Experience admits that venue is proper

7. Admitted that Experience has alleged infringement of certain copyrights, and that such copyrights are the subject of certain registrations identified in the Complaint. Admitted that there is an actual controversy as to the alleged infringement of the asserted copyrights.

8. Denied.

9. Denied.

10. Denied.

#### **AFFIRMATIVE DEFENSES**

1. CSO has failed to state a claim upon which relief can be granted.

2. CSO's claims are precluded by the doctrine of unclean hands.

3. CSO's claims are barred in whole or in part by the doctrines of laches, waiver, or estoppel.

4. CSO's claims are precluded by reason of the payment by Experience for all right, title and interest in and to all 1stPlace! software obtained from Academic Software, Inc.

5. CSO's claims are barred because it has not acted in good faith.

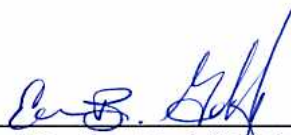
6. Experience reserves the right to assert additional defenses as discovery proceeds.

#### **DEMAND FOR TRIAL BY JURY**

Experience hereby demands a trial by jury on all issues so triable.

EXPERIENCE, INC.

By its attorneys,



Michael R. Gottfried (BBO# 542156)

Eric B. Goldberg (BBO# 564398)

Duane Morris LLP

470 Atlantic Avenue

Boston, MA 02210

(617) 289-9200

July 27, 2004

I hereby certify that the within document has  
been served on counsel for all parties mail/hand  
on 7/27/04

